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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re the Marriage of ANTHONY and
SUZANA LOCATELLI.

SUZANA LOCATELLI,

Respondent,

v.

ANTHONY LOCATELLI,

Appellant.

B258051

(Los Angeles County
Super. Ct. No. BD516629)

APPEAL from an order of the Superior Court of Los Angeles County. Thomas
Trent Lewis, Judge. Affirmed.

Anthony Locatelli, in pro. per., for Appellant.

No appearance for Respondent.

Anthony Locatelli, in propria persona, appeals from an order entered in this marital dissolution action. His former wife, Suzana Locatelli, did not file a brief or otherwise appear. Anthony¹ asserts numerous claims, several of which were asserted and rejected in his prior appeal from the judgment of dissolution. (*In re Marriage of Locatelli* (Apr. 8, 2015, B252667) [nonpub. opn.] (prior opinion).) We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In the September 9, 2013 judgment of dissolution affirmed in our prior opinion, the trial court found Anthony had breached his fiduciary duty by withdrawing \$30,000 from a Fidelity Rollover IRA (the IRA), which the court determined to be community property. For that breach of fiduciary duty, the court ordered Anthony to pay Suzana \$14,000 in sanctions, costs, and fees. In addition, the court ordered Anthony to “execute an instruction to Fidelity for an intra-IRA transfer of one-half the current balance into an IRA established by Suzana.” The court included half of the withdrawn \$30,000 in its equalization payment calculation and addressed the possibility that Anthony would make further unauthorized withdrawals from the IRA: “The Court orders that should Anthony have made or make any further withdrawals from the IRA since his \$30,000.00 withdrawal in or around mid-2012, then one-half of the amount of such withdrawal shall be paid to Suzana from Anthony’s share of the proceeds of the sale of the residence to equalize the amounts Suzana and Anthony will receive from the IRA analogous to the equalization required for Anthony’s mid-2012 \$30,000.00 withdrawal. The Court reserves jurisdiction over this IRA to determine the exact amount of deposit in the account.” The court also ordered each party, upon demand, to “execute and deliver all documents necessary to carry out the terms of this Judgment.”

On March 12, 2014 Suzana filed a “Request for Order re Breaches of Fiduciary Duty, etc.,” which was heard on May 5, 2014. Anthony did not file an opposition or response, although the court found that he had sufficient time in which to oppose the

¹ We refer to the parties by their first names to prevent confusion, and mean no disrespect by doing so.

request. He did not appear at the hearing, although the matter was trailed to the end of the court's calendar that morning, and the bailiff attempted to locate Anthony in the hall. The court admitted Suzana's "moving papers, and exhibits attached thereto, into evidence and allowed [her] to augment by offer of proof."

The court found Anthony had breached his fiduciary duty to Suzana, and the court's prior judgment, by removing \$96,000 from the IRA, in three transactions. The court further found the IRA had a value of \$104,154.16 on September 10, 2013, and would have increased in value by \$5,243.80 from that date through May 2, 2014, if it had been left undisturbed. The court accordingly concluded that Suzana was entitled to immediate payment of \$57,350.53, which included her half interest in the IRA (valued as of May 2, 2014) and \$2,856 for prejudgment interest from September 10, 2013.

Pursuant to Family Code sections 1101, subdivision (g), and 271, the court ordered Anthony to pay \$7,600 in attorney's fees and costs and \$30,000 in sanctions to Suzana's attorney for the benefit of Suzana by June 30, 2014.² Based on Anthony's admissions in the pleadings and the court's findings regarding Anthony's employment, the court found that the sanctions did not impose an unreasonable hardship. Anthony filed a timely appeal.

DISCUSSION

"A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown.'" (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) In addition, absent exceptional circumstances, legal issues adjudicated in a prior appeal normally will not be relitigated on a subsequent appeal in the same case. (*Searle v. Allstate Life Ins. Co.* (1985) 38 Cal.3d 425, 434.) This doctrine is known as the "law of the case" and applies even when an appellant cites different authorities or asserts different reasons in support of his or her legal claim or theory. (*Yu v. Signet*

² Undesignated statutory references are to the Family Code.

Bank/Virginia (2002) 103 Cal.App.4th 298, 312.) These rules apply to self-represented and represented parties. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247.)

1. *Anthony's Claims Regarding Trial Judge's Receipt of Supplemental Benefits*

Anthony argues the trial court's order was void because the judge received supplemental benefit payments from the County of Los Angeles, which Anthony claims is an interested party in the dissolution proceeding. Anthony asserts the receipt of such benefits constitutes "judicial tax fraud," "extrinsic fraud," a violation of due process, and a violation of several provisions of the Code of Judicial Ethics. In his prior appeal in this case, however, Anthony raised the issue of the legal effect of the trial court's receipt of supplemental benefit payments from the county, and this court rejected that argument. Absent a change in the law, the law-of-the-case rule precludes relitigation of this issue.

Moreover, in substance, there is nothing presented in the record supporting Anthony's claim that the county is an interested party in the case, and, as discussed in the prior opinion, a judge's receipt of supplemental benefits is not improper and does not require disqualification.

2. *Constitutional Violations, Illegal Activities, Retaliation, Bias*

Anthony asserts that the order should be reversed due to "Constitutional violations of the court" and "[i]llegal activities of the court." These claims are not supported by facts in the record. Anthony contends that Judge Lewis should have recused himself, and the order should be vacated, due to alleged bias. He further argues that Judge Lewis has a history of gender bias and of retaliation against persons challenging the supplemental benefits, relying upon an opening brief from an appeal in an unrelated case, in another division. The allegations, however, are not supported by facts in the appellate record.

Anthony asserts that the order should be reversed due to unspecified "malicious actions to strip [a]ppellant of his Civil Rights." In his summary of argument he refers to a disregard for his Second Amendment rights. Our prior opinion rejected Anthony's claim that a restraining order, imposed due to his commission of domestic violence against Suzana and having firearms in his residence in violation of a previous restraining

order, violated his Second Amendment rights. Accordingly, consideration of this claim is barred by the law of the case. Nothing in the record reflects any new action by the court with respect to the restraining order.

3. *Appearing Without Counsel*

Anthony contends that the order should be reversed because the trial court created an impediment to Anthony obtaining counsel, and that the trial court manifested an alleged bias against litigants appearing without counsel. Anthony also addresses the court's decision to conduct three separate trials and various difficulties entailed in self-representation, suggesting that the trial court denied him an opportunity to have counsel. He describes feeling under duress.

In a dissolution case, there is no right to appointed counsel. (*In re Marriage of Campi* (2013) 212 Cal.App.4th 1565, 1575.) No facts in the record support an allegation that Anthony was prevented from obtaining counsel. Moreover, Anthony has not shown that his lack of counsel prejudiced him with respect to the order. The limited record demonstrates that Anthony acted contrary to the judgment with respect to the funds in the IRA. He has not demonstrated that the trial court would have made a different order had Anthony been represented by counsel.

Anthony argues that the order should be reversed due to the trial court's bias against him, gender bias, and bias against pro. per. litigants and in favor of Suzana's attorneys. These claims were raised in Anthony's prior appeal and rejected in our prior opinion. No new facts are provided supporting these allegations with respect to the order.

4. *Abuse of Discretion in Awarding Sanctions*

Anthony asserts that the order should be reversed due to violations of due process and abuse of discretion. The trial court's imposition of the \$30,000 sanction, pursuant to sections 271 and 1101, subdivision (g), results from Anthony's breach of fiduciary duties in connection with the court's finding that Anthony removed \$96,000 from the IRA in violation of his fiduciary duty and an earlier court order. Nothing in the record suggests that these findings represented an abuse of discretion.

5. *Merits of the Order*

Anthony asserts that he withdrew the money from the IRA because (1) he did not understand the judgment, which he alleges was improperly rewritten by Suzana's counsel, and (2) he needed the money to obtain counsel. He did not, however, present these arguments to the trial court. He also suggests that his changed employment status makes paying the sanction amount and obtaining counsel a hardship. The issues raised, however, occurred after the date of the order. This appeal reviews only the correctness of the order as of the time it was made, upon the record that was before the trial court. In the order, the trial court concluded that, based on information provided in Anthony's pleadings, "he is currently working for AT&T and has substantial additional income," and that as a result, the sanction "does not impose an unreasonable hardship upon him." Information in this appeal, including a 2012 transcript of a hearing, supports this conclusion. Additional information provided by Anthony, such as IRS data from September 2014 and May 2015, cannot be considered because it was not before the trial court. "It has long been the general rule and understanding that 'an appeal reviews the correctness of a judgment as of the time of its rendition, upon a record of matters which were before the trial court for its consideration.' [Citation.]" (*In re Zeth S.* (2003) 31 Cal.4th 396, 405.)

DISPOSITION

The judgment is affirmed. Respondent shall recover her costs of appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

JOHNSON, J.